SYARIKAT UNION WOOD INDUSTRIES SDN BHD v. CHONG KOK YONG & ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
ABDUL WAHAB PATAIL JCA
BALIA YUSOF WAHI JCA
ABANG ISKANDAR JCA
[CIVIL APPEALS NO: B-02-1650-07-2012 & B-02-1689-07-2012]
29 FEBRUARY 2016

LAND LAW: *Indefeasibility of title and interest – Registered ownership – Plaintiff was registered owner of 1/4 share in land where company was operating business – Claim for rent – Whether plaintiff's claim on land impeachable by operation of law – Whether plaintiff entitled to collect rent – Whether company would be unjustly enriched if plaintiff denied of rentals – National Land Code, s. 340(1) & (2)*

TRUSTS: *Land – Creation of trust – Whether existed – Company operating business on land – Whether there was evidence on title deed that land was held on trust for company – Name of owner of undivided 1/4 share of land registered in register of title – Whether owner granted indefeasibility of title over land – National Land Code, s. 340 – Whether company established claim that trust had been created in favour of company*

Four siblings, Chang Kak Soi, Chong Kok Yong ('CKY'), the late Chong Yoo Min and Chong Ket Kin started a family business and decided to purchase a piece of land to carry out the business. On 18 July 1973, CKY entered into a sale and purchase agreement of a piece of land ('the said land'). The ownership of the land was transferred to the four siblings; each holding undivided 1/4 share of the land. In 1976, the said family business was converted into a private limited company and was incorporated under the name of Syarikat Union Wood Industries Sdn Bhd ('the UW company') and every sibling was given one share each. In Suit 754, CKY contended that the UW company had been operating on the said land without paying the rentals, thus he claimed, *inter alia*, for the sum of RM1,032,000 being the 1/4 rental amount of the said land until May 2000 and a declaration that the company pay to him the sum of RM7,200 every month from June 2000 for the usage of the said land. The UW company, however, contended that the two other co-owners, *ie*, Chang Kok Soi and Chong Ket Kin had given permission to the UW company to use the said land (*secara khas*). It was contended that CKY had asked the UW company to buy his shares in the UW company as well as his 1/4 share of the said land. The UW company alleged that it had also released CKY from any liability for a bank loan in respect of the said land. However, the transfer of ownership of the said land could not be executed due to certain reasons thus, UW company submitted that CKY must be regarded as a trustee of the said land and no rental was payable after the land was purchased by UW company. The UW company had also made

a counterclaim, *inter alia*, for a declaration that CKY do transfer his 1/4 share in the said land to the UW company. While in Suit 1105, the UW company claimed against CKY and Chong Yok Chuan (as an administrator to the estate of Chong Yoo Min), *inter alia*, a declaration that CKY and Chong Yok Chuan were trustees for the UW company. CKY, however, contended that he did not purchase the said land using UW company's money but instead had used his own money. He had then registered the said land in his name as well as his other three siblings but denied the trusteeship having been created in favour of the UW company upon it. Both suits were heard together in the High Court. The High Court Judge ('HCJ') held that the UW company's claim in Suit 1105 was dismissed with costs; CKY's claim and UW company's counterclaim in Suit 754 were dismissed with costs. Dissatisfied with the decisions, the parties appealed. Appeal 1689 was CKY's appeal in respect of the dismissal of the rental claim in Suit 754 and Appeal 1650 was UW company's appeal against the decision of the HCJ in dismissing its claim pertaining to the trusteeship in Suit 1105 as well as its counterclaim in Suit 754. The issues that arose were (i) whether CKY was the owner of the undivided 1/4 share of the said land and that if he was, whether he should be entitled to be paid the rentals due for the use of the said land by the UW company; and (ii) whether CKY was holding the 1/4 share of the said land on trust for the company.

Held (allowing Appeal 1689 in part; dismissing Appeal 1650)
Per Abang Iskandar JCA delivering the judgment of the court:

(1) CKY and UW company had mutually agreed that CKY was the registered 1/4 share owner of the said land. It could not now state otherwise. CKY purchased the said land by signing the sale and purchase agreement as the sole signatory, and none of the brothers contributed to the purchase of the said land. CKY also invoked the indefeasibility of title under s. 340(1) of the National Land Code ('NLC'). There was no evidence by the UW company that the title to the land registered in the name of CKY had been obtained under any of the circumstances enumerated under s. 340(2) of the NLC. Being indefeasible, CKY's claim to 1/4 share of the said land was indeed unimpeachable by operation of law. (paras 19 & 20)

(2) While CKY had succeeded in establishing that he was the rightful owner of the 1/4 share of the said land, he had however failed to prove on the balance of probabilities that he was entitled to be paid the pleaded amount of RM1,032,000 in rental due to lack of evidence to substantiate his claims for the rental arrears. However, some rentals ought to be paid to him for the use of the said land by UW company. Although there was no evidence led by CKY on the market valuation for rentals of the said land for the ensuing years from 2000 to 2009, CKY ought not to be denied completely of any rentals for the use of the said land by the UW company. To do so would amount to unjust enrichment in favour of the

A UW company who had indeed been using the said land during the period under scrutiny. There was some evidence led by CKY from which the rentals due for those relevant years could be derived from. CKY had legitimate rights over the 1/4 share in the said land. It was well within his legal right to prosecute that right and seek vindication of that right
B in a court of law. As such, judgment was entered in favour of CKY to the following extent only, namely that the UW company was ordered to pay rentals to CKY from 14 November 2000 at 25% of RM7,200 per month with interest at 4% per annum based on the year 2000 valuation report. The appeal by CKY in Appeal 1689 was therefore allowed in part. The HCJ was in error when she dismissed CKY's suit in Suit 754
C in total. (paras 28-33)

(3) In light of the evidence of CKY to the effect that he had paid for the purchase price of the said land in cash to the vendor, it was difficult for the UW company to establish its claim on the balance of probabilities
D that a trust had been created in favour of the UW company. Further, nothing was more telling in its effect against the UW company than the sale of the plaintiff's 1/4 share in the said land to the UW company. If CKY was a mere trustee holding the land in trust for the UW company, then CKY had no business in selling his share in the land and UW
E company also had no business in buying a piece of land which was purportedly held in its trust by the vendor. Based on the factual matrix of this case, in particular, with regard to the name of CKY being registered in the Register of Title in respect of the said land, the provisions under s. 340 of the National Land Code worked in favour of CKY by granting upon him the indefeasibility of title in respect of his
F 1/4 share in the said land. There was no evidence on the title deed that the land was held in trust for the UW company. As such the claim by the UW company in Suit 1105 was rightly dismissed by HCJ. (paras 37 & 38)

G **(4)** There was no reason to interfere with the HCJ's finding on the UW company's counterclaim against CKY. The counterclaim was ill conceived and was completely incongruous with the UW company's professed stance that the said land was held in trust by CKY on its behalf. The HCJ had succinctly captured and highlighted the inherent fallacy in the counterclaim. The counterclaim was both self
H contradicting as well as self defeating and incapable of being successful in this litigation. There was no merit in the appeal on the counterclaim by UW company. (para 40)

Bahasa Malaysia *Headnotes*

I Empat beradik, Chang Kak Soi, Chong Kok Yong ('CKY'), Chong Yoo Min yang sudah meninggal dunia dan Chong Ket Kin memulakan satu perniagaan keluarga dan memutuskan untuk membeli sebidang tanah di mana perniagaan tersebut akan dijalankan. Pada 18 Julai 1973, CKY memasuki satu perjanjian

jual beli sebidang tanah ('tanah tersebut'). Pemilikan tanah dipindahkan kepada empat beradik ini yang masing-masing memegang 1/4 perkongsian tidak berbelah bagi tanah tersebut. Pada tahun 1976, perniagaan keluarga ditukar menjadi sebuah syarikat sendirian berhad dan diperbadankan di bawah nama Syarikat Union Wood Industries Sdn Bhd ('syarikat UW') dan setiap seorang adik beradik diberikan satu saham. Dalam Guaman 754, CKY menghujahkan bahawa syarikat UW beroperasi di atas tanah tersebut tanpa membayar sewa, oleh itu beliau menuntut antara lain jumlah RM1,032,000 iaitu 1/4 jumlah sewa tanah tersebut sehingga bulan Mei 2000 dan satu perisytiharan bahawa syarikat membayarnya jumlah RM7,200 setiap bulan dari bulan Jun 2000 bagi penggunaan tanah tersebut. Syarikat UW, walau bagaimanapun, menghujahkan bahawa dua pemilik yang lain iaitu Chang Kok Soi dan Chong Ket Kin memberikan kebenaran kepada syarikat UW untuk menggunakan tanah tersebut (secara khas). Syarikat UW juga menghujahkan bahawa CKY meminta syarikat UW membeli sahamnya dari syarikat UW serta perkongsian 1/4 tanah tersebut milik CKY. Syarikat UW mendakwa bahawa ia telah melepaskan CKY daripada apa-apa liabiliti untuk pinjaman bank berkenaan tanah tersebut. Walau bagaimanapun, pemindahan milikan tanah tersebut tidak boleh dilaksanakan atas beberapa alasan tertentu, oleh itu syarikat UW menghujahkan bahawa CKY harus dianggap sebagai seorang pemegang amanah tanah tersebut dan sewa tidak perlu dibayar selepas tanah tersebut dibeli oleh syarikat UW. Syarikat UW juga membuat tuntutan balas, antara lain, satu perisytiharan bahawa CKY memindah perkongsian 1/4 dalam tanah tersebut kepada syarikat UW. Dalam Guaman 1105 pula, syarikat UW menuntut terhadap CKY dan Chong Yok Chuan (sebagai pentadbir estet Chong Yoo Min) antara lain, satu perisytiharan bahawa CKY dan Chong Yok Chuan adalah pemegang amanah untuk syarikat UW. CKY, walau bagaimanapun, menghujahkan bahawa beliau tidak membeli tanah tersebut dengan duit syarikat UW tetapi dengan duitnya sendiri. CKY kemudian mendaftarkan tanah tersebut atas namanya serta nama tiga orang adik beradiknya yang lain tetapi menafikan bahawa amanah diwujudkan memihak kepada syarikat UW. Kedua-dua guaman tersebut didengar bersama di Mahkamah Tinggi. Hakim Mahkamah Tinggi ('HMT') memutuskan tuntutan syarikat UW dalam Guaman 1105 ditolak dengan kos; tuntutan CKY dan tuntutan balas syarikat UW dalam Guaman 754 ditolak dengan kos. Tidak berpuas hati dengan keputusan kes-kes tersebut, pihak-pihak merayu. Rayuan 1689 adalah rayuan CKY terhadap penolakan tuntutan sewa dalam Guaman 754 dan Rayuan 1650 adalah rayuan syarikat UW terhadap keputusan HMT menolak tuntutan berkaitan dengan amanah dalam Guaman 1105 serta tuntutan balas dalam Guaman 754. Isu-isu yang timbul adalah (i) sama ada CKY adalah pemilik perkongsian 1/4 tidak berbelah bagi tanah tersebut dan jika begitu, sama ada beliau berhak dibayar sewa untuk penggunaan tanah tersebut oleh syarikat UW; dan (ii) sama ada CKY memegang perkongsian 1/4 tanah tersebut sebagai pemegang amanah bagi pihak syarikat.

Diputuskan (membenarkan sebahagian Rayuan 1689; menolak Rayuan 1650)

Oleh Abang Iskandar HMR menyampaikan penghakiman mahkamah:

(1) CKY dan syarikat UW saling bersetuju bahawa CKY adalah pemilik berdaftar perkongsian 1/4 tanah tersebut. Ia tidak boleh menyatakan sebaliknya sekarang. CKY membeli tanah tersebut dengan menandatangani perjanjian jual beli sebagai penandatangan tunggal dan adik-beradiknya langsung tidak menyumbang bagi pembelian tanah tersebut. CKY juga membangkitkan hak milik yang tidak boleh disangkal di bawah s. 340(1) Kanun Tanah Negara ('KTN'). Tiada keterangan oleh syarikat UW bahawa hak milik ke atas tanah itu didaftarkan dalam nama CKY diperolehi di bawah keadaan yang dinyatakan di bawah s. 340(2) KTN. Oleh sebab hak miliknya tidak boleh disangkal, tuntutan CKY ke atas 1/4 perkongsian ke atas tanah tersebut tidak boleh dinafikan melalui operasi undang-undang.

(2) Walaupun CKY berjaya membuktikan bahawa dia adalah pemilik sebenar perkongsian 1/4 tanah tersebut, dia gagal membuktikan atas imbangan kebarangkalian bahawa dia berhak dibayar jumlah yang diplidkan iaitu RM1,032,000 kerana tiada keterangan yang memadai untuk menyokong tuntutannya bagi tunggakan sewa itu. Tetapi, sewa harus dibayar kepadanya atas penggunaan tanah tersebut oleh syarikat UW. Walaupun tiada keterangan dikemukakan oleh CKY berkenaan penilaian pasaran untuk sewa tanah tersebut bagi tahun 2000 hingga 2009, CKY tidak sepatutnya dinafikan secara sepenuhnya sewa bagi penggunaan tanah tersebut oleh syarikat UW. Berbuat demikian, akan menyebabkan pengayaan tak patut menyebelahi pihak syarikat UW yang telah menggunakan tanah tersebut sepanjang tempoh yang diteliti. Terdapat keterangan yang dikemukakan oleh CKY daripada mana sewa yang harus dibayar untuk tahun-tahun relevan itu boleh diperolehi. CKY mempunyai hak sah ke atas perkongsian 1/4 tanah tersebut. Ia terangkum dalam hak undang-undangnya untuk menuntut hak itu dan berusaha mempertahankan hak itu dalam mahkamah undang-undang. Oleh itu, penghakiman memihak kepada CKY setakat berikut, iaitu syarikat UW diperintahkan membayar sewa kepada CKY dari 14 November 2000 pada 25% berjumlah RM7,200 sebulan dengan faedah pada 4% setahun berdasarkan laporan penilaian 2000. Rayuan oleh CKY dalam Rayuan 1689 dibenarkan sebahagiannya. HMT khilaf apabila menolak guaman CKY dalam Guaman 754 secara keseluruhannya.

(3) Mengambil kira keterangan CKY bahawa dia telah membayar harga belian tanah tersebut dengan wangnya sendiri kepada penjual, adalah sukar untuk syarikat UW membuktikan tuntutannya atas imbangan kebarangkalian bahawa suatu amanah diwujudkan memihak kepada syarikat UW. Tambahan lagi, terdapat kesan dalam penjualan 1/4

perkongsian tanah tersebut kepada syarikat UW. Jika CKY hanya sekadar seorang pemegang amanah tanah itu untuk syarikat UW, CKY tidak berhak menjual haknya dalam tanah itu dan syarikat UW tidak berhak membeli sebidang tanah yang kononnya dipegang secara amanah oleh penjual. Berdasarkan matriks nyata kes ini, khususnya, mengenai nama CKY didaftarkan dalam Daftar Hakmilik tanah tersebut, peruntukan di bawah s. 340 KTN memihak kepada CKY dengan memberikannya hak milik yang tidak boleh disangkal ke atas perkongsian 1/4 tanah tersebut. Tiada keterangan dikemukakan dalam surat ikatan hak milik bahawa tanah tersebut dipegang secara amanah untuk syarikat UW. Oleh itu, tuntutan oleh syarikat UW dalam Guaman 1105 telah, dengan betulnya, ditolak oleh HMT.

(4) Tiada sebab untuk mengganggu dapatan HMT berkenaan tuntutan balas syarikat UW terhadap CKY. Tuntutan balas adalah salah fikir dan tidak sesuai sama sekali dengan pendirian syarikat UW bahawa tanah tersebut dipegang secara amanah oleh CKY untuk pihaknya. HMT meneliti dengan jelas dan menekankan kesilapan sedia ada dalam tuntutan balas itu. Tuntutan balas tersebut adalah bercanggah dan tidak boleh dipertahankan dan tidak mampu berjaya dalam litigasi. Tiada merit dalam rayuan berkenaan tuntutan balas oleh syarikat UW.

Legislation referred to:
National Land Code, s. 340(1), (2)

(Civil Appeal No: B-02-1650-07-2012)
For the appellant - MJ Ganesan (Dinesh Athinarayanan with him); M/s J Ganesan Tajul Anuar & Co
For the respondent - K Kandiah (M Indrani with him); M/s Mohd Latip & Assocs

(Civil Appeal No: B-02-1689-07-2012)
For the appellant - K Kandiah (M Indrani with him); M/s Mohd Latip & Assos
For the respondent - MJ Ganesan (Dinesh Athinarayanan with him); M/s J Ganesan Tajul Anuar & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Abang Iskandar JCA:

Facts Of The Case

[1] In the 1960s, four siblings named Chang Kok Soi, Chong Kok Yong @ Ku Lon ("CKY"), the late Chong Yoo Min and Chong Ket Kin started a family business under the name of Yew Lian Door Frame Co, a business concerned with making wooden frame for doors and windows.

[2] Later, since the landlord intended to take back the land, the family decided to buy a piece of land elsewhere to do the business, purportedly using the company's money.

[3] On 18 July 1973, CKY had entered into a sale and purchase agreement of a piece of land, known as the Entry Mukim Register 2073, Lot 72 Mukim Tanjung Dua Belas (now known as the GM 520, Lot 7044 Mukim Tanjung Dua Belas, Negeri Selangor) ("the said land") at a price of RM35,875 using the company's money. The ownership of the land was transferred to the four siblings, each holding undivided 1/4 share of the land.

[4] In 1976, Yew Lian Door Frame Co, was converted into a private limited company and was incorporated under the name of Syarikat Union Wood Industries Sdn Bhd ("the UW company"). Every sibling was given one share each.

The Suits

[5] In case 22-754-2000 ("Suit 754"), CKY (as the plaintiff in this suit) contended that the UW company had been operating on the said land without paying the rentals. In this suit, he claimed, *inter alia* for, the sum of RM1,032,000 being the 1/4 rental amount of the said land until May 2000 and a declaration that the company pay to him the sum of RM7,200 every month from June 2000 for the usage of the said land. In this Suit 754, there was a counterclaim by the UW company for CKY to transfer the said land to the UW company.

[6] While in case 22-1105-2005 ("Suit 1105"), the UW company claimed against CKY and Chong Yok Chuan (as an administrator to the estate of Chong Yoo Min), *inter alia*, a declaration that CKY and Chong Yok Chuan (as an administrator to the estate of Chong Yoo Min) were trustees for the UW company.

The Defence

[7] In case Suit 754 the UW company (as the defendant in this suit) contended that the two other co-owners, ie, Chang Kok Soi and Chong Ket Kin had given permission for the UW company to use the said land (secara khas).

[8] It was contended that CKY, the plaintiff, had asked the UW company to buy his shares in the UW company as well as his 1/4 share of the said land. The UW company had agreed and made payment to CKY. The UW company had also released him from any liability for a bank loan in respect of the said land. However, the transfer of ownership of the said land could not be executed due to certain reasons. Thus, the UW company contended that CKY must be regarded as a trustee of the said land and no rental was payable after the land was purchased by the UW company. The UW company had also made a counterclaim, *inter alia*, for a declaration that CKY to transfer his 1/4 share in the said land to the UW company.

[9] In Suit 1105 CKY contended that he did not purchase the said land using the UW company's money, but instead his own money. He had then registered the said land in his name as well as his other three siblings but denied the trusteeship having been created in favour of the UW company upon it. CKY also contended that he had charged his personal property to secure loan of the said land.

Findings Of Learned High Court Judge

[10] Both suits were heard together in the High Court of Malaya at Shah Alam. On 19 June 2012, the learned High Court Judge ("HCJ") had decided as follow:

(a) The plaintiff's (the UW company) claim in Suit 1105 was dismissed with costs;

(b) The plaintiff's (CKY) claim in Suit 754 was dismissed with costs; and

(c) The defendant's (the UW company) counterclaim in Suit 754 was dismissed with costs.

[11] Dissatisfied with the decisions in both cases, both parties appealed against the decisions to the Court of Appeal. Civil Appeal No. B-02-1689-07-2012 ("Appeal 1689") is the appeal by CKY being the plaintiff in Suit 754 in respect of the dismissal of the rental claim.

[12] Civil Appeal No. B-02-1650-07/2012 ("Appeal 1650"), is the UW company's appeal against the decision of the learned HCJ in respect of the dismissal of its claim pertaining to the trusteeship in Suit 1105, as well as its counterclaim in Suit 754.

The Appeals Before Us

[13] We heard both appeals together. After a perusal of the records of appeal and the oral as well as written submissions by both parties, we had unanimously dismissed Appeal 1650 which essentially concerned with the issue of trusteeship and the counterclaim by the UW company in Suit 754. With regard to Appeal 1689, we allowed it in part in respect of rentals claimed by CKY in Suit No 754. These now are our reasons of having so decided.

The Issues And Our Findings

[14] There were few issues raised by both parties, which may be compressed as follows:

A First Issue: Whether CKY Was The Owner Of The Undivided 1/4 Share Of The Said Land And That If He Was, Whether He Should Be Entitled To Be Paid The Rentals Due For The Use Of The Said Land By The UW Company?

[15] This issue must be one of the most important issues to be determined in this appeal pertaining to Suit 754. We said so because it had been the core of the plaintiff's claim in the Suit 754 that he was the rightful owner of

1/4 of the undivided share of the said land in question. It was also his case that if he was indeed the rightful and lawful owner of the said land to the extent of 1/4 undivided share thereof, then he was entitled to payment of proportionate part of the rentals due, for use of the said land by the UW company. If he was successful in his suit against the UW company, a substantial amount would need to be paid to him accordingly. So a lot would turn on this issue. Of course, the position of the UW company being the defendant in the Suit 754 was clearly stated in its counterclaim in Suit 754, as well as appeared in Suit 1105.

[16] The UW company submitted that in 1984, CKY had sold his shares of 54,481 for a purchase consideration of RM98,000 and getting out of the company.

[17] Based on that, the UW company also agreed to release the liability of the rest as guarantor for the facilities extended to the company by Perwira Habib Bank Bhd which means that CKY had been relieved of whatever guarantee he gave to the bank, therefore rendering the fact that the subject matter ie, the said land thereby now belonged to the UW company and to it alone.

[18] CKY had also admitted at the trial that he had not only signed the share transfer form but had also executed the Land Transfer Proforma (Form 14A), to transfer, his 1/4 share in the company.

[19] CKY on the other hand contended that in the agreed of facts, CKY and the UW company have mutually agreed that CKY is the registered 1/4 share owner of the said land. It cannot now state otherwise. CKY purchased the said land by signing the sale and purchase agreement as the sole signatory, and none of the brothers contributed to the purchase of the said land. He also invoked the indefeasibility of title under s. 340(1) of the National Land Code ("NLC").

[20] It was noted too that there was no evidence led by the UW company that the title to the land registered in the name of CKY had been obtained under any of the circumstances enumerated under s. 340(2) of the NLC. Being indefeasible, CKY's claim to 1/4 share of the said land was indeed unimpeachable by operation of law.

[21] In relation to the claim for the rental arrears by CKY as plaintiff in Suit 754, it was contended by the UW company that the claim for arrears was time barred and that CKY was guilty of laches. It was also argued that there was no evidence led by CKY to establish the amount of rentals that was due to him.

[22] Having considered the submissions by both parties, we allowed in part the appeal by CKY in Appeal 1689. We noted that while he had succeeded in establishing that he was the rightful owner of the 1/4 share of the said land, being the registered owner named on the title deed, he had however failed

to prove, on the balance of probabilities that he was entitled to be paid the pleaded amount of RM1,032,000 in rental arrears, for the use of the said land by the UW company.

[23] Was the learned HCJ in error when she denied CKY in Suit 754 of his pleaded claim, being the subject matter of the Appeal 1689?

[24] We had perused the reasons for the learned HCJ's decision on that score. Essentially, it all boiled down to lack of evidence led by CKY in the Suit 754 to substantiate his claims for the rental arrears.

[25] For the two years period, ie, between 1974 and 1976 when the UW company was still a partnership firm, CKY was legally incompetent to claim rentals from the partnership firm as a person, in law, cannot be a landlord and a tenant at the same time in respect of the same landed property. At p. 20 of her grounds of judgment, the learned HCJ had ruled as follows:

> I agree with the defendant that the plaintiff's claim for rental for the period between 1974 until 1976 is unsustainable as it would tantamount to the plaintiff renting the said land owned by him to himself which is not permitted under the law. This is due to the fact that between 1974 until 1976 prior to the incorporation of the defendant as a private limited company, the said land was occupied by Syarikat Union Wood Industrial Sdn Bhd, a partnership firm of which the plaintiff is one of the partners. A person cannot be, at the same time, both landlord and tenant (see *Rye v. Rye* [1962] 1 All ER 146).

[26] With respect, we did not see any error in that finding which was basically on a legal point.

[27] As regards the longish period after that when the UW company had been incorporated, it was the finding of the learned HCJ that CKY had only relied on a single valuer's report (exh. P9) that was ten years old by the time it was produced in court. Exhibit P9 was produced in the year 2000. It was therefore not reflective of the market price for the ensuing years. We now reproduce what was written by the learned HCJ in her grounds of judgment at pp. 20-22 as follows:

> As submitted by learned counsel for the defendant and as confirmed by the valuer, exhibit P9 was only in respect of the rental rate for the year 2000. There is no valuation report or rental rate for the period prior to 2000 produced by the plaintiff, resulting in there being no evidence on the market rental value for those years.
>
> Now whether the plaintiff has proved the claim for the period between 2000-2009 based on exhibit P9 which states the market rate as RM0.15 per sq. ft.
>
> The defendant submitted that based on the case of *Selangor Coconut Bhd v. Collector of Land Revenue Kedah* [1995] 2 MLJ 371) the court should reject the market rental value given for the following reasons:

(i) despite using the comparison method, the lots compared were not given;

(ii) no information was given on the category of land use; whether there are any restrictions, whether the land is freehold or leasehold, the actual usage of the land or the location;

(iii) no map was annexed to the valuation report to show the location of the comparables in relation to the subject land;

(iv) no explanation on whether adjustments were made between the subject land and the comparables and the report does not contain any analysis at all for the valuer to state the market rental value of RM0.15 per sq. ft.

Learned counsel for the plaintiff submitted that SP4 had given evidence and had produced the valuation report. If the defendant was not satisfied with the rental rate, the defendant must challenge it by calling and producing another comparable valuation report.

I am not able to agree with learned counsel for the plaintiff. The onus is on the plaintiff to prove the sum claimed and it is not on the defendant to disprove it. No doubt SP4 testified but his evidence on exhibit P9 was unsatisfactory and it does not prove the figure claimed by the plaintiff for the reasons stated by the defendant above. In the circumstances, I find that the plaintiff has failed to prove the rental value and rental amount claimed.

[28] Looking at the overall evidence as alluded to by the learned HCJ in determining the issue of rentals in arrears, while we could agree with her that there was no evidence led by CKY on the market valuation for rentals of the said land for the ensuing years from 2000 to 2009, however, with respect, we could not agree with her that CKY ought to be denied completely of any rentals for the use of the said land by the UW company. There cannot be any denying that the UW company was indeed using the said land during the period under scrutiny. In fact, we could find no evidence emanating from the UW company to state either categorically or indirectly by way of necessary implication, that it never occupied the said land as alleged by CKY. Indeed, the UW company's case had been that it had the permission of the siblings to use and occupy the land for free. In the alternative, it was the UW company's case that the said land was held in trust for the UW company and as such, no rentals was therefore payable and due to CKY.

[29] In a situation such as this one before us, we were of the considered view that in the absence of any valuation report for the ensuing years post 2000 pertaining to the prevailing market rates of rentals, the learned HCJ ought to make use of the valuation report exh. P9 as the guiding base document to arrive at an appropriate figure as rentals to be paid to CKY for the use of the said land for those relevant years. We said so, because, rentals could only go up as time passes. While it would be to the distinct disadvantage to CKY by him not producing the valuation for the years

subsequent to the year 2000, the same ought not to be used to completely deny CKY of any rentals altogether for the use of said land by the UW company. To do so, would amount to unjust enrichment in favour of the UW company. There was some evidence led by CKY from which the rentals due for those relevant years to be derived from. As such, some rentals ought to be paid to him for the use of the said land by the UW company, namely by using the said exh. P9 as a base document.

[30] We also noted that the learned HCJ had taken into account the motivation that had apparently driven CKY to pursue this claim against the UW company. Indeed, that factor had not escaped the acute observation of the learned HCJ, as can be seen in her grounds of judgment at pp. 23-24 like so:

> The plaintiff in his evidence on whether there was a resolution passed by the company in respect of the trust said "No. I know the truth. I bought the lands with my hard work and sweat. I am 76 years old. I need not lie to this court. It is my brother Chong Kok Soi's greed that has brought me to this court.
>
> The plaintiff did not testify further as to what exactly Chong Kok Soi did that led the plaintiff to file the suit. During cross-examination however, he agreed with the suggestion of learned counsel for the defendant that he started this case after knowing that Chong Yok Chuan has brought a claim for rental against the defendant.

[31] In our view, granted that CKY's action had been so motivated, as observed by the learned HCJ, that should not however detract from the fact that he had legitimate rights over the 1/4 share in the said land. It was well within his legal right to prosecute that right and seek vindication of that right in a court of law, as he had done in this case.

[32] As such, having considered all the relevant evidence, we had entered judgment in favour of CKY to the following extent only, namely that the UW company was ordered to pay rentals to CKY from 14 November 2000 at 25% of RM7,200 per month with interest at 4% per annum based on the year 2000 valuation report (exh. P9). We ordered costs of RM5000 be paid to CKY by the UW company.

[33] Premised on the above considerations, the appeal by CKY in Appeal 1689 was therefore allowed in part. The learned HCJ was in error when she had dismissed CKY's suit in Suit 754 in total.

Second Issue: Whether CKY Was Holding The 1/4 Share Of The Said Land On Trust For The Company?

[34] We had also dismissed the appeal of the UW company in relation to its claim/prayer as contained in Suit 1105 namely for a declaration that the two defendants named in the suit therein be declared as mere trustees of the UW company, pertaining to their position *vis-à-vis* the said land.

[35] The UW company submitted there are circumstances that brought about the trust situation:

(a) The purchase price for the subject matter was paid from the company's bank account. The two payments were made by cheque issued by Yew Lian Door Frame Co. It is clear evidence that the said two cheques belong to the partnership company of the four partners using Chung Khiaw Bank Cheques.

(b) Corroborative evidence to confirm that the land was bought by Yew Lian Door Frame Co:

(i) Yew Lian Door Frame Co was in operation from 1969 and was operating a Chung Khiaw Bank Account;

(ii) by 1973, when the agreement was entered to purchase the said land, the partnership company Yew Lian Door Frame Co was expanding its business. Naturally the said land was for the sole purpose of expanding its business; and

(iii) soon after the purchase of the said land the four partners decided to change name of the partnership company to Syarikat Union Wood Industrial. Later they decided to convert their partnership company into a private limited company.

[36] CKY contended that there was no evidence to show that the said land was ever owned by him *vide* a trust. There was no documentary evidence whatsoever to show that a trust was ever created and neither was there any direct oral evidence to this effect.

[37] We had noted that the learned HCJ had made an acute observation when she described the position taken by the UW company was one that was based on circumstantial evidence in order to establish the creation of a trust in favour of UW company. There was no documentary evidence supporting its claim to that effect. Neither was there direct oral evidence emanating from any witness for the UW company to that desired effect. In light of the evidence of CKY to the effect that he had paid for the purchase price of the said land in cash to the vendor against which there was no challenge during cross-examination coming from the UW company, it would be indeed difficult for the UW company to establish its claim on the balance of probabilities that a trust had been created in favour of the UW company. The learned HCJ had given her reasons for holding against the UW company in Suit 1105 when she dismissed its suit. But, to our mind, nothing was more telling in its effect against, the UW company than the sale of the plaintiff's 1/4 share in the said land to the UW company. If CKY was a mere trustee holding the land in trust for the UW company, then CKY had no business in selling his share in the land and UW company also had no business in buying a piece of land which was purportedly held in its trust by the vendor. That scenario indeed would amount to a near impossibility.

[38] Of course, the other factor that worked against the UW company must necessarily be the fact that CKY's name was registered in the Register of Title in respect of the said land. We were with learned counsel for CKY that, based on the factual matrix of this case, in particular, with regard to the name of CKY being so registered, which was not disputed or challenged, the provisions under s. 340 of the National Land Code would work in favour of CKY by granting upon him the indefeasibility of title in respect of his 1/4 share in the said land. As alluded to earlier, there was no evidence on the title deed that the land was held in trust for the UW company. As such, the claim by the UW in Suit 1105 was rightly dismissed by the learned HCJ. We saw no reasons whatsoever why we should interfere with Her Ladyship's findings and decision. We had therefore affirmed the same.

[39] As regards the counterclaim, the UW company had pleaded, as stated by the learned HCJ at pp. 13-14 of her grounds of judgment that:

> … in 1984, the plaintiff sold his ¼ share of the said land to the defendant for RM43,319.00. To prove this pleaded fact, the defendant made reference to pp. 270-272 of the Bundle of Document (B1).
>
> While it is not in dispute that in 1984 the plaintiff sold his shares for RM98,000.00 and that he had received this money (exhibit P7A and P7B), there is no document to support the defendant's contention that the plaintiff had sold his 1/4 share in the said land to the defendant. Although the defendant alluded to a Memorandum of Transfer in its statement of defence, there is no evidence on the Memorandum of Transfer. As far as the evidence shows, the plaintiff remains the owner of the 1/4 share of the said land.
>
> Be that as it may, I find the position taken by the defendant on the sale inconsistent and in contradiction with its stand that the plaintiff holds 1/4 of the said land as trustee for the defendant. The defendant's pleaded defence that the plaintiff sold 1/4 of the said land to the plaintiff negates the defendant's case that from the time the land was purchased in 1973, there was never any intention in giving the land to the four brothers as their personal property. There would be no issue of the plaintiff selling 1/4 of the said land if it does not belong to him.

[40] In light of the evidence as led, we had found no reason to interfere with the learned HCJ's finding on the UW company's counterclaim against CKY. It was quite apparent to us that the counterclaim was ill-conceived and was completely incongruous with the UW company's professed stance that the said land was held in trust by CKY on its behalf. To our mind, the learned HCJ had succinctly captured and highlighted the inherent fallacy in the counterclaim. It just could not stand the close scrutiny to which it had been subjected to by the learned HCJ. The counterclaim was both self-contradicting as well as self-defeating. It was incapable of being successful in this litigation. As such, we saw no merit in the appeal on the counterclaim by the UW company and we had therefore dismissed the UW company's appeal pertaining to the same.

Third Issue: Whether The Learned HCJ Was Bound By The Decision Of The Kuantan High Court In Civil Suit MT2-22-417-1997

[41] To appreciate this issue, it would be of much assistance if we reproduce the relevant factual matrix outlined by the learned HCJ in Shah Alam who had heard this matter. It concerned Suit 1105 that was heard before her together with Suit 754 herein. In that Suit 1105, the UW company was the plaintiff and it had sued two of the brothers as the defendants. One of the defendants was Chong Kok Yong (CKY), whom, if we were to recall, was the plaintiff in Suit 754. The other defendant in the Suit 1105 was Chong Yok Chuan. The purpose that drove Suit 1105 had been the UW company's stance to have the court to declare that both the defendants were mere trustees for the UW company in relation to their position *vis-à-vis* the said land in question. As we had indicated prior, we would quote what the learned HCJ in Shah Alam had said in her grounds of judgment at p. 7 therein:

> The 2nd Defendant (Chong Yok Chuan) is the administrator of the estate of Chong Yoo Min. Chong Yok Chuan has brought a similar claim for rental against Syarikat Union Wood Industries Sdn Bhd *vide* suit No 22-417-1997 wherein Justice Mariana Hj Yahya held that Chong Yok Chuan is merely a trustee holding the interest in the said land for the beneficial interest of Union Wood Industries. It was agreed in 22-417-1997 that the decision therein would bind Chong Yok Chuan, the 2nd defendant in suit 22-1105-2005.
>
> The two suits No. 22-754-2000 and No. 22-1105-2005 were heard together as they involved the same facts and issues. The proceeding however does not involve the 2nd defendant (in suit 22-1105-2005) in view of the agreement that the decision of Justice Mariana binds him.
>
> Regardless of the judgment of Justice Mariana, I shall proceed to determine the dispute between Chong Kok Yong and Syarikat Union Wood Industries based on the evidence before me as certainly her judgment does not bind me.

[42] So, that was seed from which the issue at hand had blossomed into. To our mind, the judgment of the High Court of Kuantan related to a dispute between the UW company and the second defendant in Suit 1105. While that Kuantan judgment binds the second defendant in Suit 1105, it does not operate to bind the first defendant in Suit 1105, ie, CKY for the simple reason that the live dispute in Suit 1105 was between the UW company and the first defendant. As such, the learned HCJ in Shah Alam in Suit 1105 was entirely correct when she ruled that she was not bound by the ruling of the Kuantan High Court which was concerned with the dispute between the UW company and the second defendant in Suit 1105. Indeed, the Shah Alam HCJ had only proceeded to hear the dispute between the UW company and the first defendant, a dispute that was never before the Kuantan High Court to determine. So, the question of the Shah Alam Court being bound by the

Kuantan High Court did not actually arise in that sense. Another reason being that, the second defendant had already agreed to be bound by the decision of the Kuantan High Court. In such a circumstance, there was no further need for the Shah Alam HCJ to be concerned with that matter. As such, really the issue of whether the Shah Alam HCJ was bound by the Kuantan HCJ was not actually an issue of any consequence given the circumstances of this case.

[43] In the upshot, based on the above considerations, we had decided the way we did. To recap, we dismissed Appeal 1650 ie, the appeal by UW company in respect of the dismissal of its claim in Suit 1105 (pertaining to trusteeship) as well as its counterclaim in Suit 754 (for declaration that CKY to transfer his 1/4 share to UW company) with costs of RM 5, 000 to CKY.

[44] For Appeal 1689, we allowed CKY's appeal in part ie, to enter judgment in favour of CKY for rentals from 14 November 2000 at 25% of RM7,200 per month with interest at 4% per annum based on the year 2000 valuation report (exh. P9) with costs of RM5,000 to the appellant ie, CKY.

[45] We had so ordered accordingly.